

1 IN THE UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF MISSOURI
3 NORTHERN DIVISION

4 DAVID IVEY, M.D.,)
5)
6 Plaintiff,)
7)
8 vs.) Case No. 2:17-cv-00082-CDP
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DEPOSITION OF FRANCISCO DIAZ, M.D.

TAKEN ON BEHALF OF DEFENDANT STEPHANIE HILDEBRAND
NOVEMBER 2, 2018

PLAINTIFF'S
EXHIBIT

16

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1 list the materials that you reviewed, the one thing
2 you list here that isn't on the flash drive
3 probably is the jail video. Do you see reference
4 to that?

5 A. Yes. Yes.

6 Q. You had a chance to look at the
7 jail video, I presume the surveillance video of
8 Mr. Ivey at some point in time --

9 A. Yes.

10 Q. Prior to your report; is that
11 right?

12 A. Yes.

13 Q. How did the jail video or what you
14 saw on the jail video play any role at all in your
15 evaluation of this case?

16 A. It plays a role to the extent that
17 it shows the moments before Mr. Ivey died. As a
18 pathologist I cannot make a diagnosis that just by
19 looking at the video this patient had X or Y
20 diagnosis. You just see the evolution of time
21 through that video, and you can see the behavior of
22 the patient. What you can see on the video is a
23 patient that is restless, that is I would say
24 unquiet for a significant period of time. Just
25 looking at the video, no physician can tell you,

1 wait, he's having a heart attack, just to give you
2 an example, or he's having a stroke.

3 **Q.** **Uh-huh.**

4 **A.** It's just a way for if you're
5 evaluating the case tells you what transpired. One
6 observation I made as a forensic pathologist is
7 that the moment he died basically he went into
8 rigidity rather quick. After the fact, after
9 knowing as a pathologist that he had asthma and for
10 a period of time he was completely restless in that
11 space, you can tell that, you know, he didn't have
12 enough oxygen. So by the time he died rigidity
13 occurs because the muscles cannot break the bond
14 between muscle fibers. That's, you know, due to
15 lack of oxygen. In other words, you know, it takes
16 a period of time when you die to develop rigidity.
17 But if you have expended your oxygen then rigidity
18 ensues faster. To answer your question how does
19 that help me make a determination, it helps to the
20 extent that it confirms that what his pathological
21 diagnosis is, which is asthma, lack of oxygen, and
22 he was very restless during that significant period
23 of time of that video. He's expending oxygen and
24 so on and so forth.

25 **Q.** **From that restlessness that you saw**

1 are you able to conclude -- again, I know I'm
2 asking you this in a vacuum. But are you able to
3 conclude that his death was the direct result of
4 asthma, or was it the result of his inability to
5 breathe for some reason? In other words, can you
6 identify asthma as the inability to breathe or just
7 the fact he's unable to breathe?

8 A. That's a question type which one
9 came first, the chicken or the egg?

10 Q. Perhaps it is. Here is the reason
11 I ask: In your report on page 3 you note that you
12 also think he had symptoms of withdrawal, and you
13 say that on the video he's unresponsive, a chain of
14 events characteristic of withdrawal symptoms such
15 as restlessness, insomnia and dysphoria, which you
16 said contributed to the lack of oxygen to his brain
17 and therefore was a contributor to his demise?

18 A. Sure.

19 Q. So do you think that there was some
20 symptomatology of withdrawal that led to his
21 rigidity, his inability to breathe, or is it asthma
22 or a combination of both?

23 A. It is a combination. More
24 importantly the asthma. The asthma, you cannot put
25 it aside because the asthma is a desist entity that

1 obstructs your airways. Your airways become very
2 narrow, and that's why patients have wheezing.
3 When you have an acute exacerbation like Mr. Ivey
4 had, breathing is a struggle. As time passes then
5 there is not enough oxygen. A patient will come
6 with a multitude of things. In my opinion, he was
7 having some withdrawal symptoms as well. In his
8 case let's put it this way, that didn't help him
9 because of his dysphoric, his moving. I mean a
10 person that is already struggling because not
11 enough oxygen is getting into his brain, that adds
12 to his predicament.

13 **Q. Okay.**

14 A. That's what I'm saying. However,
15 the asthma prevails because the asthma is -- it is,
16 it is really significant in terms of a finding.

17 **Q. In your materials you indicate that
18 in your experience you have performed over 9,000
19 post-mortem examinations over your career. How
20 many times is the diagnosis of asthma your
21 identified cause of death, to the best of your
22 estimation?**

23 A. Sure. I will give you an
24 estimation. In any given jurisdiction medical
25 examiners are -- I will talk about my public work